

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to factors of his federal employment.

FACTUAL HISTORY

On September 26, 2018 appellant, then a 35-year-old crew boss, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2018 he injured his lower back when lifting a box into a trailer while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that he did not stop work.³ It acknowledged that appellant was in the performance of duty at the time of the alleged incident.

In a September 22, 2018 emergency department report, Dr. Desiree H. Crane, an emergency medicine specialist, noted that appellant presented with right low back pain radiating down to his right leg. She indicated that he had a history of chronic back pain and previously underwent discectomy five years ago. Dr. Crane noted that appellant had experienced worsening right low back pain for the past month or more. She diagnosed right-sided low back pain with right-sided sciatica.

In a September 25, 2018 emergency department report, Dr. Kelly C. Phelps, Board-certified in family practice, evaluated appellant for worsening right lumbar pain. He noted that appellant had previously received treatment for the same condition on September 22, 2018. Dr. Phelps obtained a history of appellant experiencing an acute exacerbation of his symptoms while lying on the ground at work. He diagnosed lumbar pain and radiculopathy.

Dr. Peter L. Tanner, Board-certified in emergency medicine, noted in a September 28, 2018 emergency department report that appellant sustained a back injury six days prior and had been experiencing back pain since the injury. He noted that his injury occurred while lifting and turning. Dr. Tanner conducted a physical examination and reviewed x-rays of the lumbosacral spine. He diagnosed back pain with sciatica on the right. In an after-visit summary of even date, Dr. Tanner reiterated his diagnosis.

In an emergency department report dated October 1, 2018, Dr. Jason Larson, Board-certified in emergency medicine, noted that appellant experienced back pain beginning September 22, 2018 while lifting and turning at work. He diagnosed back pain. In an after-visit summary of even date, Dr. Larson diagnosed acute lumbar back pain, acute right-sided sciatica, and traumatic herniated disc. On October 3, 2018 Dr. Larson evaluated appellant for severe pain in his right lumbar spine. He indicated that appellant had sustained his injury while fighting fires. Dr. Larson reviewed the findings from a magnetic resonance imaging (MRI) scan and diagnosed acute lumbar back pain, acute right-sided sciatica, and traumatic herniated disc.

³ An October 16, 2018 report of work status (Form CA-3) from the employing establishment indicated that appellant returned to work with restrictions on September 28, 2018. A separate Form CA-3 of even date indicated that he stopped work on October 3, 2018.

Dr. Adam R. Krommenhoek, a Board-certified emergency medicine specialist, noted in October 3, 2018 emergency department notes, that appellant injured his back approximately a month ago and diagnosed lumbar herniated disc with right leg radiculopathy.

In an October 3, 2018 progress report, Dr. Howard R. Reichmann, a Board-certified neurosurgeon, advised that appellant had been evaluated in the emergency room four times in the last two weeks for severe back and right leg pain. He indicated that he was unable to perform his work duties and could not walk due to severe sciatica with weakness in his half and severe pain in the sciatic distribution on the right side.

In a November 13, 2018 development letter, OWCP advised appellant of the deficiencies in his claim and requested that he submit factual and medical information. It provided him with a questionnaire for completion and afforded him 30 days to submit the necessary evidence.

Appellant submitted an April 30, 2013 MRI scan of the lumbar spine, which demonstrated L5-S1 disc extrusion, mild bilateral L5-S1 neural foraminal narrowing, and minimal circumferential bulges at L4-L5 and L3-L4 levels.

On October 4, 2018 Dr. Reichman performed a redo right hemilaminectomy, facetectomy, discectomy, and decompression of the central canal and nerve root with removal of a large sequestered fragment at L5-S1 on the right and a left L5-S1 hemilaminotomy, partial facetectomy, and decompression of the nerve root with an interbody fusion.

In a December 10, 2018 response to OWCP's development questionnaire, appellant noted that, at the time of his injury, he was lifting and loading a food box that weighed about 50 pounds or more into a trailer.⁴ He explained that around August 8, 2018 he and his coworkers were dealing with a wild fire and needed to load the trailer. Appellant asserted that he felt a pop when he picked up one of the food boxes. He advised that, while his pain was severe, it initially went away after an hour. Appellant indicated that he continued his assignment and went to see a chiropractor, who opined that his x-ray was normal. Thereafter, he returned to work. Appellant asserted that on the morning of September 22, 2018 he woke up with pain related to a sciatic nerve flare and a stiff back. He alleged that he could barely walk and needed to seek medical care at a hospital immediately. Appellant noted that on September 25, 2018 he again woke up with pain and was sent to the emergency room.

By decision dated December 13, 2018, OWCP denied appellant's traumatic injury claim. It found that the accepted September 22, 2018 incident occurred as alleged, but that the medical evidence was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident.

On January 10, 2019 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

⁴ Appellant submitted statements from coworkers indicating that he initially injured his back on August 8, 2018 picking up a box and had to receive treatment in the emergency department on September 22, 2019.

A telephonic hearing was held on May 16, 2019.

Thereafter, OWCP received an October 1, 2018 MRI scan of the lumbar spine, which revealed severe L5-S1 degenerative disc disease with a right subarticular disc extrusion causing mass effect upon the S1 and S2 nerve roots.

In a March 7, 2019 letter, Dr. Reichman noted that appellant was seen in the emergency room and was diagnosed with a large recurrent sequestered fragment at the L5-S1 level on the right, which was causing severe right radiculopathy. He related he underwent L5-S1 decompression and fusion on October 4, 2018.

By decision dated July 30, 2019, OWCP's hearing representative affirmed the December 13, 2019 decision, finding that the medical evidence of record failed to explain how his diagnosed back condition was causally related to the accepted September 22, 2018 employment incident.

On October 1, 2018 Dr. Kent Smith, a Board-certified internist and gastroenterologist, obtained a history of appellant experiencing back pain beginning September 22, 2018. He related that he was "an active firefighter and he is not sure exactly how he hurt his back, but he is doing things that are hard on his back all the time." Dr. Smith noted that an MRI scan had shown a herniated disc at L5-S1, the site of his back surgery five years prior.

On July 10, 2020 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a May 8, 2020 narrative report, wherein Dr. Neil Allen, a Board-certified internist and neurologist, noted that he had reviewed appellant's medical records to determine whether a causal relationship existed between his back condition and the accepted September 22, 2018 employment incident. He advised that appellant had initially sustained an injury to his low back lifting a box at work on August 8, 2018. Dr. Allen noted that he had continued performing his regular work duties, but his pain worsened. In September 2018 appellant "began another firefighting assignment during which he was required to repetitively bend, lift, twist, push and pull while carrying 45 pounds of gear for 16 hours per day. On September 22, 2018 he was lying on the ground when he experienced severe low back pain." Dr. Allen diagnosed an aggravation of intervertebral disc disorders with radiculopathy. He noted that appellant had a prior history of a lumbar discectomy in 2013, but had been asymptomatic for years before the injury in August 2018. Dr. Allen explained that his initial lifting on or about August 8, 2018 resulted in the forceful shifting of the gel-like center of his L5-S1 disc. He related that this "shifting applied stress and caused the subsequent breakdown and bulging of the fibrous outer layer of the L5-S1 disc resulting in the compression of the proximate neural structures." Dr. Allen asserted that repetitive and forceful flexing, twisting, pushing, pulling, and lifting performed between September 10 and 24, 2018 had worsened appellant's condition. He found that appellant's disc bulging and resulting compression became so severe by September 24, 2018 that he had suffered a complete loss of strength and coordination in his lower limbs, preventing him from standing and walking. Dr. Allen opined that his injury, resulting from the repeated exposure at work, was "both reasonable and expected" based on the described mechanism of injury.

By decision dated January 29, 2021, OWCP denied modification of the July 30, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,⁶ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

⁵ *Supra* note 2.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *P.B.*, Docket No. 20-1643 (issued March 30, 2022); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

In a report dated May 8, 2020, Dr. Allen reviewed the medical evidence and indicated that appellant had initially injured his low back lifting a box at work on August 8, 2018. Appellant continued performing his employment duties, but his pain increased. In September 2018, he worked on a firefighting assignment that required repetitive bending, twisting, and lifting while carrying gear and working 16-hour days. Dr. Allen noted that on September 22, 2018 appellant had experienced severe low back pain lying on the ground. Appellant sought treatment at the hospital and continued working. On September 24, 2018 Dr. Allen again experienced severe low back pain such that he could not stand or walk. He diagnosed an aggravation of intervertebral disc disorders with radiculopathy. Dr. Allen opined that the initial August 2018 injury from lifting resulted in the forceful shifting of the gel-like center of appellant's L5-S1 disc, causing the subsequent breakdown and bulging of the fibrous outer layer of the L5-S1 disc and compression of the proximate neural structures. He further found that appellant's work duties, which required repetitive and forceful flexing, twisting, pushing, pulling, and lifting from September 10 to 24, 2018, had worsened his condition.

The Board finds that Dr. Allen's report is sufficient to require further development of the medical evidence. Dr. Allen provided a comprehensive understanding of the medical record and case history. His report provides a pathophysiological explanation as to how appellant's initial August 8, 2018 back injury and subsequent performance of his employment duties, including repetitively lifting and twisting, caused his diagnosed back condition. There is no evidence of record contradicting Dr. Allen's opinion on causation.

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt.¹² Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Accordingly, the Board finds that Dr. Allen's medical opinion is rational and logical and is, therefore, sufficient to require further development of appellant's claim.¹⁴

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall prepare a statement of accepted facts and refer appellant to a specialist in the appropriate field of medicine, along with the case record and the statement of accepted facts, for a reasoned opinion regarding whether he sustained a low back condition causally related to or aggravated by the accepted employment factors. If the second opinion

¹² See *D.M.*, Docket No. 21-0908 (issued March 4, 2022).

¹³ *C.S.*, Docket No. 19-1809 (issued July 29, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017).

¹⁴ See *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *Id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

physician disagrees with the opinion of Dr. Allen, he or she must provide a fully-rationalized explanation of why the accepted employment factors were insufficient to have caused or aggravated appellant's low back condition. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board